



MISSOURI CITY DEVELOPMENT AUTHORITY MEETING AGENDA

Notice is hereby given of a meeting of the Board of Directors of the Missouri City Development Authority City to be held on **Monday, March 16, 2009**, at **7:30 p.m.** at: **City Hall, 2nd Floor Conference Room behind Council Chamber**, 1522 Texas Parkway, Missouri City, Texas, for the purpose of considering the following agenda items. All agenda items are subject to action. The Board of Directors reserves the right to meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

1. ROLL CALL

2. Approval of the minutes of the meeting of February 2, 2009.

3. Consider authorizing a Tri-Party Agreement among the Reinvestment Zone Number Three, the City of Missouri City and the Missouri City Development Authority to provide for duties and responsibilities related to the Zone.

4. Consider authorizing the general manager to execute an engagement letter for bond counsel services.

5. Consider the issuance of debt to reimburse Perry Homes for Developer Advances in Public Improvement District 4.

6. CLOSED EXECUTIVE SESSION

The Board of Directors may meet in a closed session pursuant to Chapter 551 of the Texas Government Code, for reasons including but not limited to: consultation with legal counsel to seek or receive legal advice or consultation regarding pending or contemplated litigation; discussion about the value or transfer of real property and other real estate matters; deliberation regarding economic development negotiations; and deliberation regarding personnel matters. The Board will meet in a closed session on the following and as authorized by:

Texas Government Code, Section 551.071 – Consultation with attorney to seek or receive legal advice regarding pending or contemplated litigation, a settlement offer, or on a matter which the duty of the attorney to the City under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Texas Open Meetings Act: PID 4 bond issuance.

7. CONVENE INTO OPEN SESSION – *Take action, if necessary.*

8. ADJOURN

In compliance with the Americans with Disabilities Act, the City of Missouri City will provide for reasonable accommodations for persons attending Missouri City Development Authority meetings. To better serve you requests should be received 24 hours prior to the meetings. Please contact Patrice Fogarty, City Secretary, at 281.403.8685.

CERTIFICATION

I certify that a copy of the March 16, 2009, agenda of items to be considered by the Missouri City Development Authority was posted on the City Hall bulletin board on March 13, 2009 at 2:00 p.m.



Maria Gonzalez, Deputy City Secretary

I certify that the attached notice and agenda of items for consideration by the Board of Directors was removed by me from the City Hall bulletin board on the ____ day of _____, 2009.



**Missouri City Development Authority
Agenda Item
March 16, 2009**

- 2.** Approval of the minutes of the meeting of March 2, 2009.

Background information attached as follows:

March 2, 2009 Missouri City Development Authority Minutes



Missouri City Development Authority Meeting Minutes

1. ROLL CALL

The Board of Directors of the Missouri City Development Authority, held a meeting on Monday, March 2, 2009, at 6:45 p.m. in the Council Chambers at City Hall, Second Floor, 1522 Texas Parkway, Missouri City, Texas.

Present were Chairman Owen, Directors Reiter, Wyatt, Jimerson, and Gary; City Manager Simpson, City Attorney Kelley and City Secretary Fogarty. Assistant City Manager Atkinson, and First Assistant City Attorney Smith. Absent: Director Gibson and Kolaja.

Chairman Owen called the meeting to order at 6:45 p.m.

2. Approval of the minutes of the meeting of February 2, 2009.

Motion made by Director Wyatt and seconded by Director Gary; the Board unanimously approved the minutes of the meeting of February 2, 2009, as presented.

3. CLOSED EXECUTIVE SESSION

At 6:47 p.m., Council convened in closed executive session pursuant to chapter 551 of the Texas Government Code, for one or more of the following reasons:

Texas Government Code, Section 551.071 – Consultation with attorney to seek or receive legal advice regarding pending or contemplated litigation, a settlement offer, or on a matter which the duty of the attorney to the City under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Texas Open Meetings Act: PID 4 bond issuance.

4. RECONVENE INTO OPEN SESSION

The MCDA reconvened into open session at 6:59 p.m.; no action taken at this time.

5. ADJOURN

The meeting adjourned at 6:59 p.m.

BY: _____
Allen Owen, Chairman

ATTEST: _____
Eunice Reiter, Secretary



**Missouri City Development Authority
Agenda Item
March 16, 2009**

3. Consider authorizing a Tri-Party Agreement among the Reinvestment Zone Number Three, the City of Missouri City and the Missouri City Development Authority to provide for duties and responsibilities related to the Zone.

Background information attached as follows:

Cover Memo



**Missouri City Development Authority
Agenda Item Cover Memo
March 16, 2009**

To: Missouri City Development Authority Board of Directors
Agenda Item: **3** Consider authorizing a Tri-Party Agreement among Reinvestment Zone Number Three, the City of Missouri City and the Missouri City Development Authority providing for duties and responsibilities related to Reinvestment Zone Number Three.
Submitted by: Gary W. Smith, First Assistant City Attorney

SYNOPSIS

The attached Tri-Party Agreement among Reinvestment Zone Number Three, the City of Missouri City and the Missouri City Development Authority establishes the duties and responsibilities of the parties in matters related to the Zone.

BACKGROUND

A similar Tri-Party Agreement has been utilized in both Reinvestment Zone One and Reinvestment Zone Two. The Agreement commits the City and the Zone to provide the Zone increment to the Authority to fund projects to accomplish the goals of the Zone Financing and Project Plan. The Agreement authorizes the Authority to act on behalf of the Zone and to perform the administrative services for the Zone. Approval of this Agreement will allow the Zone to rescind the agreement with the City for the provision of administrative and legal services. The Authority is authorized to use more expeditious and efficient mechanisms not available to the City, when the project is an improvement constructed in a reinvestment zone and is managed by a private venture participant. The Agreement restricts the Authority to act for the Zone and to expend funds for the Zone only when the action or expenditure is for an authorized purpose of the Zone.

The Agreement anticipates that the Sienna Plantation Management District will issue debt or bonds to reimburse the developers that construct the Zone improvements. A separate agreement with Sienna Plantation Management District, containing such a provision, will be developed and presented.

FISCAL ANALYSIS

There is no fiscal impact from approval of this Agreement.

STAFF'S RECOMMENDATION

Staff recommends approval of the Tri-Party Agreement.

**Frank Simpson
City Manager**

**AGREEMENT BY AND BETWEEN THE CITY OF MISSOURI CITY,
TEXAS; REINVESTMENT ZONE NUMBER THREE, CITY OF MISSOURI
CITY; AND THE MISSOURI CITY DEVELOPMENT AUTHORITY**

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

THIS AGREEMENT (the "Agreement"), effective as of March 16, 2009, is made by and between the **CITY OF MISSOURI CITY, TEXAS**, a home-rule municipality in the State of Texas (the "City"); **REINVESTMENT ZONE NUMBER THREE, CITY OF MISSOURI CITY**, a reinvestment zone created by the City pursuant to Chapter 311, Texas Tax Code (the "Zone"); and the **MISSOURI CITY DEVELOPMENT AUTHORITY**, a nonprofit local government corporation organized and existing under the laws of the State of Texas (the "Authority").

RECITALS

WHEREAS, the City authorized the creation of the Authority to aid, assist and act on behalf of the City in the performance of the City's governmental and proprietary functions with respect to the common good and general welfare of Missouri City; and

WHEREAS, the City created the Zone pursuant to Chapter 311, Texas Tax Code (the "TIRZ Act"); and

WHEREAS, the Board of Directors of the Zone ("Zone Board") and the City Council of the City each approved and adopted a Project Plan and a Reinvestment Zone Financing Plan for the Zone; and

WHEREAS, the City and the Zone Board have determined that it is advisable to have the Authority assist the Zone Board and act as consultant to the Zone Board in the implementation of the Project Plan and the Reinvestment Zone Financing Plan and provide the other services set forth in this Agreement, including contracting for the construction of improvements and the issuance of its bonds or coordinating the issuance of Sienna Plantation Management District bonds to facilitate the Plan; and

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, the City, the Zone and the Authority agree as follows:

I. DEFINITIONS

Definitions. The terms "Agreement," "Authority," "City," "Zone," "Zone Board," "TIRZ Act," have the meanings set forth in the preamble hereof, and the following capitalized terms shall have the meanings provided below, unless otherwise defined or the context clearly requires otherwise. For purposes of this Agreement the words "shall" and "will" are mandatory, and the word "may" is permissive.

"Appraisal District" shall mean the Fort Bend County Appraisal District.

"Authority Board" shall mean the Board of Directors of the Authority.

"Authority Obligations" shall mean the contractual obligations that the Authority may incur from time to time with a Developer pursuant to Article III hereof and includes without limitation Development Agreements.

"Bonds" shall mean the bonds of the Authority or the Management District payable from a pledge of the TIRZ Revenue Fund.

"Captured Appraised Value" shall mean the total appraised value of property in the Zone as of January 1 of any year less the Tax Increment Base of the Zone, all as defined in the TIRZ Act.

"City Council" shall mean the City Council of the City.

"City Manager" shall mean the city manager of the City or such person as he or she shall designate.

"County" shall mean Fort Bend County, Texas.

"County Drainage District" shall mean Fort Bend County Drainage District.

"Developer" shall mean a person who is developing or redeveloping, or proposes to develop or redevelop, a TIRZ Project within the Zone and may include natural persons, private entities, public or private not-for-profit corporations, the City, a school district, Fort Bend County, the State of Texas, Sienna Plantation Management District, any other governmental body, or any other kind of person.

"Development Agreement" shall mean an agreement between the Authority and a Developer relating to the development, construction, remodeling, or rehabilitation of a TIRZ Project.

"Financing Plan" shall mean the then-existing reinvestment zone financing plan for the Zone as adopted by the Zone Board and approved by the City Council, pursuant to the TIRZ Act.

"HCC" shall mean Houston Community College System.

"Management District" shall mean Sienna Plantation Management District.

"Participation Agreement" means the Participation Agreement between the City, the Zone and the County, County Drainage District, HCC, or SPLID with respect to the participation of the County, County Drainage District, HCC, or SPLID in the Zone, as such may be amended from time to time.

"Project Cost" shall mean those costs of public works and improvements and other costs for which payment can be made pursuant to the TIRZ Act that are identified in the TIRZ Plan.

"Project Plan" shall mean the then-existing project plan for the Zone as adopted by the Zone Board and approved by the City Council, pursuant to the terms of the TIRZ Act.

"Projects" shall mean any project for which moneys in the Tax Increment Fund can be used pursuant to the TIRZ Act and which has been approved in the TIRZ Plan.

"Revenue Fund" shall mean the subaccount of the Revenue Fund into which the Tax Increments are deposited by the City for the use of the Authority hereunder.

"SPLID" shall mean Sienna Plantation Levee Improvement District of Fort Bend County.

"Tax Increment" shall mean the amount of property taxes collected each year by each Taxing Unit participating in the Zone (to the extent of its participation) on the Captured Appraised Value.

"Tax Increment Base" shall mean the total appraised value of all real property taxable by the City and located in the Zone as of January 1, 2008, the year in which the Zone was effective and designated as a reinvestment zone or January 1, 2009 for the County and County Drainage District, plus the total appraisal of all real property taxable by the City and the other

Taxing Units participating in the Zone and annexed to the Zone determined as of January 1 of the year in which any future area is annexed to the Zone.

"Tax Increment Fund" shall mean the Tax Increment Fund created by the City for the Zone including any subaccount therein into which all Tax Increments shall be deposited by the City.

"Taxing Unit" shall mean the County, County Drainage District, HCC, SPLID and any other Taxing Unit that participates in the TIRZ.

"TIRZ Plan" shall mean the Project Plan and the Financing Plan.

II. SCOPE OF SERVICES BY AUTHORITY

To the extent that funds are available in the Tax Increment Fund and subject to the limitations of this Agreement, the Authority shall assist the City by implementing the TIRZ Plan, including the financing and construction of the Projects either directly or through a Developer of the Management District, negotiating and managing contracts and agreements with the Management District related to implementing the TIRZ Plan, and carrying out such other services related to the TIRZ as may be requested by the City Manager of the City. Such services shall include without limitation management and administration of the Zone (including legal services), assistance with the enlargement of the Zone and amendments to the TIRZ Plan, preparation of tax rolls and documentation and coordination with other taxing units, contracting for the construction of infrastructure, purchase of equipment and supplies, and buying and selling real property as necessary to implement the Plans and as permitted by the TIRZ Act. The Authority may provide the services required by this Agreement through staff, subcontractors, and consultants. Actions of the Authority with respect to the Zone carried out prior to the date of this Agreement are hereby ratified and approved.

III. POWERS OF THE AUTHORITY

A. General Statement. The Authority has the authority to enter into Authority Obligations with Developers and enter into contracts with consultants, the Management District and others to be paid from moneys to be paid to the Authority from Tax Increment Fund pursuant to this Agreement, and further, the Authority may issue Bonds and coordinate the issuance of Management District Bonds with the consent of the City Council; provided that nothing in this Agreement shall be construed to authorize the Authority to expend any of the Tax Increment funds received pursuant to this Agreement for any costs other than Project Costs.

B. Power to Incur Authority Obligations. Subject to the provisions of this Article, the Authority shall have the power from time to time to issue and incur Authority Obligations and enter into contracts with consultants and the Management District upon such terms and conditions as the Authority Board and the Zone Board shall determine to be necessary or desirable to implement the TIRZ Plan. The Authority Obligations may be in the form of a Development Agreement with the Developer of a Development who agrees to construct improvements or other facilities included in the TIRZ Plan in exchange for the obligation of the Authority to repay the Developer for such costs, or a portion thereof, from future payments made by the City and the Zone to the Authority pursuant to this Agreement. All Development Agreements provide that (i) the Authority will not reimburse any Developer for any Project Cost that is determined to be an ineligible Project Cost under the TIRZ Act and (ii) the Developer shall repay the Authority for any payment made by the Authority to the Developer that is determined to be ineligible.

C. Approval of Bonds and Other Obligations. The Authority may issue Bonds and may coordinate the issuance of Management District Bonds secured by payments made pursuant to this Agreement with the approval of City Council.

D. Use of Tax Increments. Amounts deposited in the Revenue Fund shall be applied in the following order of priority (i) amounts pledged or required for the payment of outstanding Bonds secured by the Revenue Fund, including Bonds in the process of issuance and refunding Bonds, (ii) administrative costs of the Zone and the Authority relating to the Zone, and (iii) payments of other Authority Obligations relating to the Zone.

E. Pledge of Revenue Fund. The Authority and the Zone Board may pledge and assign all or a part of the Revenue Fund under this Agreement to the owners and holders of Bonds and Developers pursuant to a Development Agreement for Projects. The City consents to any assignment and pledge consistent with this Agreement and approves the terms and conditions of the instruments assigning or pledging the proceeds to be received by the Authority pursuant to this Agreement.

IV.

DUTIES AND RESPONSIBILITIES OF THE CITY AND THE ZONE

A. Tax Increment Fund. The City has established and will maintain a separate Tax Increment Fund, including subaccounts if necessary, in the City treasury into which Tax Increments shall be deposited. During the term of this Agreement, Tax Increments shall be paid to the Authority from the Tax Increment Fund as herein provided.

B. Limitation of Source of Payment. The City and the Zone shall have no financial obligation to the Authority other than as provided in this Agreement or in other agreements between the City, the Zone and the Authority. The obligation of the City and the Zone to the Authority under this Agreement is limited to the Tax Increments that are collected by the City. This Agreement shall create no obligation on the City or the Zone that is payable from taxes or other moneys of the City other than the Tax Increments that are collected by the City. The obligation of the City and the Zone to the Authority under this Agreement shall be subject to the rights of any of the holders of Bonds or other obligations that have heretofore or are hereafter issued by the City, the County and any other Taxing Units that are payable from or secured by a general levy of ad valorem taxes throughout the taxing jurisdiction of the City, the County and the other Taxing Units.

C. Collection and Payment of Tax Increments by the City and the Zone. In consideration of the services and Projects to be provided by the Authority, the City and the Zone covenant and agree that they will, as authorized under the TIRZ Act and other applicable laws, continuously collect the Tax Increments from the Taxing Units whose participation in the Zone is reflected in the TIRZ Plan during the term of this Agreement in the manner and to the maximum extent permitted by applicable law. To the extent the City and the Zone may legally do so, the City and the Zone also covenant and agree that they will not permit a reduction in the Tax Increments paid by the Taxing Units except to the extent provided in the agreement with the Taxing Unit executed at the time the Taxing Unit agreed to participate in the Zone. In addition, the City covenants and agrees that it will not dissolve the Authority and that any repeal of the right and power to collect the Tax Increments will not be effective until all the Bonds or other Authority Obligations have been paid in full or until they are legally defeased. The City and the Zone further covenant and agree that they will make all payments as set forth in Article V below, by a direct deposit into the Revenue Fund, without counterclaim or offset, but minus any expenses incurred by the City in connection with the collection of the Tax Increments and minus any amount retained pursuant to the provisions set forth in Article V below.

D. Obligations of City and the Zone to be Absolute. The obligation of the City and the Zone to make the payments set forth in this Agreement shall be absolute and unconditional and until such time as this Agreement, Bonds and the contractual obligations of the Authority incurred pursuant to this Agreement have been fully paid or provision for payment thereof shall have been made in accordance with their terms (or with respect to the Tax Increments, the date of expiration of the Zone, if earlier), the City and the Zone will not suspend or discontinue any payments provided for in this Agreement and will not terminate this Agreement for any cause, including,

without limiting the generality of the foregoing, the failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement except as provided in Article XVII. Nothing contained in this section shall be construed to release the Authority from performance of any of the agreements on its part contained in this Agreement, and in the event the Authority shall fail to perform any such agreement on its part, the City may institute such action against the Authority as the City may deem necessary to compel performance so long as this action does not abrogate the obligations of the City and the Zone to make the payments set forth in this Agreement to pay the Bonds or to meet its Authority Obligations to Developers.

V.

CITY PAYMENT TO AUTHORITY

A. Generally. The City, on behalf of itself and the Zone, will pay the Authority, not later than the first business day of each calendar quarter during the term of this Agreement, all monies then available in the Tax Increment Fund, subject to the retention by the City of an amount equal to the City's direct administrative costs connected with the Zone and the TIRZ Plan, not to exceed five percent of the amount available in the Tax Increment Fund. The Authority shall deposit the payments received pursuant to this section into the Revenue Fund and use the monies in the Revenue Fund for payment of its TIRZ-related costs, its obligations to the holders of Bonds, its obligations to Developers pursuant to a Development Agreement, or its other contractual obligations. The obligation to make these payments shall survive a termination of this Agreement as provided by Article XVII hereof.

B. City Issuance of Other Debt. In the event the City determines, in the unlimited sole discretion of City Council, to issue general obligation bonds or other debt to fund a Project Cost ("City Debt"), thereby relieving the Authority of the duty to so fund the applicable Project Cost, the City shall be entitled to withdraw from amounts deposited in the Revenue Fund funds sufficient to service the City Debt; provided that (i) the City's right to withdraw funds under this Section shall be subject to any covenants applicable to Bonds relating to insurance requirements, reserve fund requirements and other issues relating to the security of the Bonds and (ii) outstanding City Debt shall be considered Bonds for purposes of any coverage covenant relating to the issuance of parity Bonds.

VI.

ACCOUNTING AND AUDITS

A. Accounts, records, and accounting reports. The Authority will maintain books of records and accounts in which full, true and proper entries will be made on all dealings, transactions, business and matters that in any way affect or pertain to the operation of the Zone and the allocation and application of funds provided hereunder. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. The Authority shall provide free access to the books and records at all times to the City and the Zone or their representatives and shall permit them to examine and audit the same and make copies thereof. The Authority shall further allow the City and the Zone and their representatives to inspect all work data, documents, proceedings and activities related to this Agreement. Such right of access and audit shall continue until the end of the third full fiscal year after the date of final payment under this Agreement. The Authority will operate on the same fiscal year as the City.

B. Audit. At the end of each fiscal year (beginning with the fiscal year or fraction thereof during which this Agreement is executed), the Authority will have an audit prepared by an independent certified public accountant for that fiscal year that shall be submitted to the Authority, the Zone and the City within 120 days after the end of the fiscal year. The Authority shall furnish copies of the audit to the City Manager, the Zone Administrator and the Zone Board.

C. Authority Depository. Any moneys received from investing and reinvesting the moneys paid by the City and the Zone to the Authority shall remain in the Revenue Fund until used by the Authority for one of the purposes permitted by this Agreement and may be commingled with other moneys of the Authority, provided that these funds shall be accounted for separately. Such funds shall be invested and reinvested by the Authority only in investments that would be eligible for investment by the City pursuant to the provisions of the Public Funds Investment Act (Chapter 2256, Texas Government Code). Such funds will be secured by the depository bank in the same manner as City funds are required to be secured at the City depository and in accordance with applicable law and City procedures.

VII. RIGHT OF OWNERSHIP

All property and improvements purchased by the Authority shall be the property of the Authority and shall be maintained by the Authority throughout the term of this Agreement. The Authority may lease, sell or otherwise dispose of such property upon such terms and conditions as the Authority deems desirable, provided that, title to Zone Improvements, constructed by a Developer pursuant to a reimbursement agreement with such Developer, shall remain with such

Developer until reimbursed by the Authority (or the City under Article V. B., above). Upon termination of this Agreement, title to all Authority property shall immediately vest in the City without the need for further action on the part of the City.

VIII. PERSONAL LIABILITY OF PUBLIC OFFICIALS

To the extent permitted by law, no director of the Authority nor any employee or agent of the Authority, no director of the Zone nor any employee or agent of the Zone and no employee of the City nor any employee or agent of the City shall be personally responsible for any liability arising under or growing out of the Agreement or operations of the Authority under the terms of this Agreement.

IX. CITY AND ZONE NOT LIABLE FOR DELAY

It is expressly agreed that in no event shall the City or the Zone be liable or responsible to the Authority or any other person for or on account of any stoppage or delay in the work herein provided for by injunction or other legal or equitable proceedings or from or by or on account of any delay for any cause over which the City or the Zone has no control.

X. INDEMNITY AND RELEASE

A. INDEMNITY FOR PERSONAL INJURIES. THE AUTHORITY COVENANTS AND AGREES TO, AND DOES HEREBY, DEFEND, INDEMNIFY AND HOLD THE CITY, THE ZONE, AND THEIR OFFICERS, DIRECTORS, AND EMPLOYEES (THE "INDEMNIFIED PERSONS") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO ANY PERFORMANCE UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

1. THE AUTHORITY'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS' OR SUBCONTRACTORS' (COLLECTIVELY IN LETTERED PARAGRAPHS 1-3, "AUTHORITY'S") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

2. THE INDEMNIFIED PERSONS' AND THE AUTHORITY'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER THE AUTHORITY IS IMMUNE FROM LIABILITY OR NOT; AND

3. THE INDEMNIFIED PERSONS' AND THE AUTHORITY'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER THE AUTHORITY IS IMMUNE FROM LIABILITY OR NOT.

THE AUTHORITY SHALL DEFEND, INDEMNIFY, AND HOLD THE INDEMNIFIED PERSONS HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. THE AUTHORITY'S INDEMNIFICATION OBLIGATION IS LIMITED TO \$500,000 PER OCCURRENCE. THE AUTHORITY SHALL NOT INDEMNIFY THE INDEMNIFIED PERSONS FOR THE INDEMNIFIED PERSON'S SOLE NEGLIGENCE.

B. INDEMNITY TO CITY PROPERTY. AUTHORITY SHALL LIKEWISE INDEMNIFY AND HOLD HARMLESS THE CITY FOR ANY AND ALL INJURY OR DAMAGE TO CITY PROPERTY ARISING OUT OF OR IN CONNECTION WITH ANY AND ALL ACTS OR OMISSIONS OF AUTHORITY, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES OR INVITEES.

C. RELEASE. THE AUTHORITY AGREES TO AND SHALL RELEASE THE INDEMNIFIED PERSONS FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE OR LOSS IS CAUSED BY THE INDEMNIFIED PERSON'S CONCURRENT NEGLIGENCE.

D. Defense of Claims.

1. Assumption of Defense. The Authority may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the Indemnified Persons. The Authority shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, the Authority must advise the Indemnified Persons as to whether or not it will defend the claim. If the Authority does not assume the defense, the Indemnified Persons shall assume and control the defense, and all defense expenses constitute an indemnification loss.

2. Continued Participation. If the Authority elects to defend the claim, the Indemnified Persons may retain separate counsel at their own expense to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. The Authority may settle the claim without the consent or agreement of the Indemnified Persons, unless

the settlement (i) would result in injunctive relief or other equitable remedies or otherwise require the Indemnified Persons to comply with restrictions or limitations that adversely affect the Indemnified Persons; (ii) would require the Indemnified Persons to pay amounts that the Authority does not fund in full or (iii) would not result in the Indemnified Persons' full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

E. Payment from Tax Increment. All costs of obligations of the Authority and the Zone imposed by this Article may be paid from proceeds from insurance or, to the extent provided by law, Tax Increments.

XI. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that the Authority shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of the City or the Zone. Except as herein provided: (i) the Authority shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder and all persons performing the same and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; (ii) the doctrine of respondeat superior shall not apply as between the City or the Zone and the Authority, its officers, agents, employees, contractors and subcontractors and (iii) nothing herein shall be construed as creating a partnership or joint enterprise between the City or the Zone and the Authority. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant, or employee of the City or the Zone.

XII. INSURANCE

The Authority shall obtain and maintain insurance coverage continuously during the term of this Agreement and the Authority shall contract with each contractor engaged by it hereunder to maintain (and cause each of its subcontractors to maintain) insurance coverage during the term of its contract in substance and amount as may be agreed upon by the Parties.

XIII. ADDRESS AND NOTICE

Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed, or sent by electronic or facsimile transmission confirmed by mailing written confirmation at substantially the same

time as such electronic or facsimile transmission, or personally delivered to an officer of the receiving party at the following addresses:

Missouri City Development Authority
1522 Texas Parkway
Missouri City, Texas 77489
Attn: President, Board of Directors

Reinvestment Zone Number Two, City of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489
Attn: Zone Administrator

City of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489
Attention: City Manager

Each party may change its address by written notice in accordance with this section. Any communication addressed and mailed in accordance with this section shall be deemed to be given when so mailed, any notice so sent by electronic or facsimile transmission shall be deemed to be given when receipt of such transmission is acknowledged and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by, the Authority, the Zone or the City, as the case may be.

XIV. APPLICABLE LAWS

This Agreement is made subject to and shall be construed in accordance with the Constitution and laws of the State of Texas, except for conflicts of law, and the Charter of the City.

XV. CAPTIONS

The captions at the beginning of the Articles of this Agreement are guides and labels to assist in locating and reading such Articles and, therefore, will be given no effect in construing this Agreement and shall not be restrictive of the subject matter of any article, section or part of this Agreement.

XVI. SUCCESSORS AND ASSIGNS

This Agreement shall bind and benefit the respective parties and their legal successors, and shall not be assignable, in whole or in part, by any party hereto without first obtaining the written consent of the other party. Nothing herein shall be construed as creating any personal liability on the part of any officer or agency of the City, of the Zone or of the Authority.

XVII.

TERM AND TERMINATION, DISSOLUTION OF AUTHORITY

A. In general. This Agreement shall become effective, and its initial term shall begin, on the date first set forth above, and end upon the termination of the Zone.

B. Termination for cause. A party may terminate its performance under this Agreement only upon default by the other party. Default by a party shall occur if the party fails to perform or observe any of the terms and conditions of this Agreement required to be performed or observed by that party. Should such a default occur, the party against whom the default has occurred shall have the right to terminate all or part of its duties under this Agreement as of the 90th day following the receipt by the defaulting party of a notice describing such default and intended termination, provided: (i) such termination shall be ineffective if within said 90-day period the defaulting party cures the default or (ii) such termination may be stayed, at the sole option of the party against whom the default has occurred, pending cure of the default. No termination of this Agreement will affect the obligation of the City and the Zone to pay an amount that will permit the Authority to pay Bonds or Authority Obligations issued or incurred pursuant to and consistent with this Agreement prior to termination.

C. Dissolution of Authority. The City agrees not to dissolve the Authority or the Zone unless it makes satisfactory arrangements to provide for the payments of the Authority's Bonds or other Authority Obligations incurred prior to the Authority's dissolution.

XVIII.

AMENDMENT OR MODIFICATIONS

Except as otherwise provided in this Agreement, this Agreement may be changed, amended or modified only by the mutual written consent of the parties hereto.

[EXECUTION PAGES FOLLOW]

IN TESTIMONY OF WHICH this instrument has been executed on behalf of the Authority, the Zone and the City effective as of the date first above written.

CITY OF MISSOURI CITY

Allen Owen, Mayor

ATTEST/SEAL:

APPROVED AS TO FORM:

Patrice Fogarty, City Secretary

Caroline Kelley, City Attorney

MISSOURI CITY DEVELOPMENT AUTHORITY

Allen Owen, President

ATTEST:

Eunice Reiter, Secretary

REINVESTMENT ZONE NUMBER THREE, CITY OF MISSOURI CITY



Ron Lee, Chairperson

ATTEST:

Gary W. Smith, Assistant Secretary



**Missouri City Development Authority
Agenda Item
March 16, 2009**

4. Consider authorizing the general manager to execute an engagement letter for bond counsel services.

Background information attached as follows:

Cover Memo



**Missouri City Development Authority
Agenda Item Cover Memo
March 16, 2009**

To: Missouri City Development Authority Board of Directors
Agenda Item: 4 Consider authorizing the general manager to execute an engagement letter for bond counsel services.
Submitted by: Gary W. Smith, First Assistant City Attorney

SYNOPSIS

The attached engagement letter with Andrews Kurth will provide the Development Authority with access to legal services related to bond issues and other legal services needed in administering the Public Improvement Districts and Reinvestment Zones.

BACKGROUND

Andrews Kurth serves as bond counsel for the City of Missouri City. The firm possesses the knowledge and expertise necessary to assist the Development Authority in the issuance of debt and other obligations related to the Public Improvement Districts and Reinvestment Zones. Utilization of the same firm as bond counsel for the City and the Development Authority will provide a unified approach in managing the various debt obligations of the two entities.

FISCAL ANALYSIS

Services related to bond, or other debt issuance, will be paid as issuance costs. Other legal services will be billed at the firm's usual hourly rates.

STAFF'S RECOMMENDATION

Staff recommends authorizing the general manager to execute the engagement letter with Andrews Kurth.

**Frank Simpson
City Manager**